

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE
FOR CLEANUP AND ABATEMENT ORDER NO. R5-2009-XXXX
FOR

EL DORADO COUNTY
AND THE
UNITED STATES DEPARTMENT OF AGRICULTURE FOREST SERVICE,
ELDORADO NATIONAL FOREST

RUBICON TRAIL
EL DORADO COUNTY

Background

The Executive Officer has issued a draft Cleanup and Abatement Order (CAO) to El Dorado County and the United States Department of Agriculture (collectively, "Discharger") alleging that the Discharger has caused or permitted, or threatens to cause or permit a condition of pollution and nuisance. A hearing is currently scheduled to be held before the Central Valley Water Board on **23 April 2009**.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the CAO. At the hearing, the Central Valley Water Board will consider whether to issue the CAO. The Central Valley Water Board may modify the CAO before issuing it. The public hearing will commence at **1:00 p.m.** or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at
11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting has been posted on the Central Valley Water Board's web page at: http://www.waterboards.ca.gov/centralvalley/board_info/meetings.

Because a large crowd is expected, the Central Valley Water Board will set up an overflow area with an audio and/or video connection to the hearing room.

Hearing Procedures

The hearing will be conducted in accordance with this Hearing Procedure. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE CHAIR OR THE ADVISORY TEAM IN THEIR DISCRETION.

Hearing Participants

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are generally not subject to cross-examination. Interested persons generally may not present evidence at the hearing (e.g., photographs, eye-witness testimony, monitoring data).

All written evidence, including photographs, submitted by interested persons prior to the due dates for written submissions will be accepted, unless the Chair excludes it at the hearing. Any interested person who submitted evidence shall appear at the hearing to affirm the written testimony if asked, and may be subject to cross examination if called by a designated party. Designated parties may object to specific evidence as hearsay under Government Code section 11513 if interested persons who submitted photographs or other evidence fail to comply with this directive.

Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. El Dorado County
3. United States Department of Agriculture

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply:

The Prosecution Team (see below), El Dorado County and United States Department of Agriculture shall each have a combined 40 minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement.

Hearing Panels: The board expects an extensive number of persons will wish to speak. The board requests interested persons to form two panels: Panel A, to be organized by

Rubicon Trail Foundation; and Panel B, to be organized by Center for Sierra Nevada Conservation, California Sportfishing Protection Alliance, Monte Hendricks and/or Richard Platt. Each panel will have 30 minutes to make a presentation.

Other interested persons shall have 3 minutes to present a non-evidentiary policy statement. The total amount of time for interested persons to comment may be limited. The Central Valley Water Board expects there to be an extensive number of persons that wish to address the board. This means that some interested persons might not have an opportunity to speak. Therefore, interested persons are requested to make joint presentations or appoint someone to speak on behalf of multiple interested persons, and participants are requested to avoid redundant comments.

Designated parties and interested persons may not cede their unused time to others.

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who prepared the proposed CAO and will present evidence to support it (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Ken Landau, Assistant Executive Officer; and Lori Okun, Senior Staff Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer; Joe Karkoski, Acting Assistant Executive Officer; Wendy Wyels, Environmental Program Manager; Sue McConnell, Senior Water Resources Control Engineer; Marty Hartzell and Drew Coe, Engineering Geologists; and Patrick Pulupa, Staff Counsel. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa.

As the Regional Board's Executive Officer, Pamela Creedon regularly advises the Central Valley Water Board on a wide range of unrelated matters, but is not advising the board in this proceeding. Patrick Pulupa occasionally advises the board, but is not advising the board in this proceeding. Other members of the Prosecution Team may have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons may not engage in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the CAO between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if

verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Primary Contacts

Advisory Team:

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Prosecution Team:

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Submission of Presentations, Evidence and Policy Statements

The public comment period on the CAO was over 65 days. All written submissions were due on 1 April 2009, except that the Advisory Team granted an extension to the United States Department of Agriculture and State of California Department of Parks, Off-Highway Vehicle Division until 2:00 p.m. on 3 April 2009. No other written submissions from designated parties or interested persons will be accepted or reviewed, unless allowed by the Chair at the hearing.

Designated Parties, Panel A and Panel B may present Power Point or other electronic presentations. However, presentations may not be used to add new evidence that was required to be submitted by the due date for written submittals. Please e-mail presentations to the Regional Board Webmaster at: webmaster5@waterboards.ca.gov at least 24 hours in advance. You may instead bring your files on a USB flash drive or CD ROM and give them to board staff prior to the start of the hearing, but the board is not required to delay the hearing if there are technical difficulties with a presentation. You must bring one printed copy of your presentation for the record, in addition to providing an electronic copy, but you are not required to make printed handouts for the board members or staff.

Evidentiary Documents and File

The CAO and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Suite 200, Rancho Cordova. This file shall be considered part of the official administrative record for this hearing. Many of these documents are also posted on-line at <http://www.waterboards.ca.gov/centralvalley/>.

Objections or Questions

Any objections to these Hearing Procedures that are not raised before the hearing or at the commencement of the hearing shall be waived.

Questions concerning this proceeding may be addressed to Lori Okun or Ken Landau.